

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Wilbert Kitson Andrew Turner,

Plaintiff,

ORDER

-against-

18 Civ. 3370 (AEK)

Dr. Raul Ulloa, et al.,

Defendants.

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THE HONORABLE ANDREW E. KRAUSE, U.S.M.J.¹

On September 17, 2021, Defendants filed a “Suggestion of Death Upon the Record Pursuant to Rule 25(a)(1),” noting the death of *pro se* Plaintiff Wilbert Kitson Andrew Turner during the pendency of this action, and stating that the suggestion of death was “based upon the Suggestion of Death and Order of Dismissal filed and entered in the United States District Court for the Southern District of New York in *Wilbert K.A. Turner v. Agent George Gjelaaj, et al.*, Case No. 1:18-cv-01973-LTS-GWG.” ECF Nos. 113 & 114.²

Rule 25(a)(1) provides the mechanism for substitution of a new party in the event of the death of a party. Specifically, Rule 25(a)(1) states that:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

¹ This case was reassigned to the undersigned on October 15, 2020.

² ECF Nos. 113 and 114 are virtually identical, except that at ECF No. 113, counsel erroneously attached a copy of this Court’s order at ECF No. 112 to the suggestion of death.

There is no indication on the docket that Defendants served the suggestion of death in this case upon either the *pro se* Plaintiff at his last known address or upon his daughter, the person who had informed counsel in the *Gjelaj* case of Plaintiff's death. *See Turner v. Gjelaj*, 18-cv-1973 (LTS) (GWG), ECF Nos. 127-128. The 90-day clock for filing a motion for substitution will not start to run until "*service of a statement noting the death.*" Fed. R. Civ. P. 25(a)(1) (emphasis added).

By no later than September 24, 2021, Defendants are hereby ordered to serve both the "Suggestion of Death Upon the Record Pursuant to Rule 25(a)(1)" and a copy of this Order upon the *pro se* Plaintiff at the address specified below (which will be the new address of record on the docket in this matter), and upon Plaintiff's daughter, Nickesha Turner, via email at nickeyturner07@gmail.com, the email address used by the parties for service of various documents on Ms. Turner in the *Gjelaj* matter. *See* 18-cv-1973, ECF Nos. 130, 131, 136, 138, 139. Defendants are further ordered to file proof of service on the docket.

Assuming service is made by September 24, 2021 and proof of service is filed on the docket, the deadline for an authorized representative of plaintiff to move to substitute the proper party is December 27, 2021.

If no motion to substitute the proper party is filed on or before December 27, 2021, Defendants are hereby directed to submit a letter motion to the Court seeking dismissal of this matter pursuant to Rule 25(a). The letter motion must be filed no later than January 10, 2022.

* * * * *

On December 21, 2020, Plaintiff submitted a change of address notification in the *Gjelaj* case, asking that correspondence as of December 23, 2020 be addressed to him at 149-60 256th Street, Rosedale, NY 11422. *See* 18-cv-1973, ECF No. 103. The Clerk of the Court is

respectfully directed to update the address for Mr. Turner on the docket in this case to this same address.

Dated: September 20, 2021
White Plains, New York

SO ORDERED.

A handwritten signature in black ink, appearing to read "Andrew Krause", with a horizontal line extending to the right.

ANDREW E. KRAUSE
United States Magistrate Judge